

CAPITAL PROJECTS ADVISORY REVIEW BOARD

**John L. O'Brien Building
504 15th Avenue, Hearing Room A
Olympia, Washington
October 13, 2005
9:00 AM**

Minutes

<u>MEMBERS PRESENT</u>	<u>REPRESENTING</u>	<u>MEMBERS ABSENT</u>	<u>REPRESENTING</u>
Gerald "Butch" Reifert	Design Industry	Vacant	House of Representatives (R)
Rocky Sharp	Specialty Contractor	Sen. Phil Rockefeller	Senate (D)
Ed Kommers	Specialty Contractor	Sen. Dave Schimdt	Senate (R)
David D. Johnson	Construction Trades Labor	Larry Byers	Insurance/Surety Industry
Carolyn Crowson	OMWBE	Daniel Absher	General Contractor
Olivia Yang	Higher Education		
John Lynch (Chair)	General Administration		
Rodney Eng	Cities/Counties/Ports		
Michael Mequet	Cities/Counties/Ports		
Wendy Keller	Public Hospital Project Rvw Bd		
Dan Vaught	School District Project Rvw Bd		
Rep. Kathy Haigh (Vice Chair)	House of Representatives (D)		
Gary Ballew	Cities/Counties/Ports		

STAFF & GUESTS

Nancy Deakins, GA	Michael Transue, ARC
Searetha Kelly, GA	Ron Bard, Kennedy, Jenks
Valerie Gow, Puget Sound Meeting Services	Carol Moher, Barrier Free Design
Nora Huey, King County	Charlie Brown, King County Schools
Albert Schaffler, OMWBE	Larry Stevens, MCA/NECA
Tom Peterson, Hoffman Construction	Don Aarts, Centennial Contractors
Andy Stepelton, GA	Brad Buswell, NECA Cascade
Ginger Eagle, WPPA	Darlene Septelka, WSU
Roger Benson, Mortenson Construction	Ashley Probart, AWC
David Jansen, WSDOC	Stan Bowman, AIAWA

Welcome & Introductions – Chair's Comments

John Lynch, Chair, called the Capital Projects Advisory Review Board (CPARB) meeting to order at 9:03 a.m.

Mr. Lynch provided introductory comments about the Board's work and focus for the meeting to set the course for the Board's strategic planning. Members present provided self-introductions.

A meeting quorum was attained. Mr. Lynch advised that the Board's meetings fall under the Open Public Meetings Act and is open to the public. All subcommittees of the Board are also subject to the Open Public Meetings Act. Mr. Lynch recommended posting all subcommittee meeting dates on the Department of General Administration's (GA) website. The Board's website address is www.ga.wa.gov/cparb/.

The Governor is conducting a Governor's Boards & Commissions Conference on December 15 at the Labor & Industries Building in Tumwater. All members are invited to attend. A Governor's reception will immediately follow the meeting at 4:00 p.m.

Dave Johnson moved, seconded by Carolyn Crowson, to sponsor the cost (\$25) for Board members attending the Governor's Reception on December 15, 2005. Motion carried.

Staff will forward the invitation and RSVP electronically to each member.

Approve Agenda

The agenda was amended and approved to defer the *Present Research & Data Collection Assistance* agenda item after the *Assign Subcommittees* agenda item.

Approval of September 12, 2005 Minutes

Several corrections were requested to the minutes of September 12, 2005:

The vacant position of Insurance/Surety Industry should be listed under *Members Absent*.

The last sentence in the third paragraph on page 2 should be revised to state, "The effort has created different challenges, but the GA is working on streamlining its operations as well as meeting the Governor's mandate for reducing 17 mid-management positions."

The last sentence in the fifth paragraph on page 2 should be revised to state, "Bremer cited as an example, the Apprenticeship bill that was adopted during the legislative session as well as the state's emphasis to increase business opportunities to minority and women-owned contractors."

The last sentence in the eighth paragraph on page 2 should be revised to state, "She challenged the Board to think differently and to use their knowledge-base to work through problems and issues."

The second sentence in paragraph six on page 7 should be revised to state, "Mr. Eng replied design build is not extensively used and that..."

On page 14, the first two motion for Vice Chair should be corrected to reflect:

"Wendy Keller moved, seconded by Rocky Sharp, to nominate Rodney Eng as Vice Chair."

"Gerald Reifert moved, seconded by Dan Absher, to nominate Olivia Yang as Vice Chair."

On page 15, the first motion should reflect that members voted unanimously to elect Kathy Haigh as Vice Chair.

A short discussion followed on the degree of detail within the minutes and a request to ensure minutes are distributed as quickly as possible after a meeting.

Rodney Eng moved, seconded by Dave Johnson, to approve the minutes as amended. Motion carried unanimously.

Members discussed distributing minutes and generally agreed that minutes that have not been finalized may be distributed as long as the minutes are marked "Draft." It was agreed it will be helpful for members to electronically submit any corrections to draft minutes prior to the meeting.

Present Member Issues

Chair Lynch advised members to address the top three issues specific to their respective industry that are linked to the goals of the legislation and issues the Board should address.

Chair Lynch introduced Tom and Marsha Brasher, Team Tech, who will help guide the Board through its strategic planning. Mr. Brasher provided introductory comments about the process of strategic planning and the immediate goal for the Board to begin with a quick start and define issues that should be addressed immediately. He asked members to consider “Level 3 thinking.” “Level 1 thinking” is personal, professional thinking about how the outcome will benefit the person. “Level 2 thinking” is advocating for an organization’s cause rather than for the benefit of the cause. “Level 3 thinking” is thinking for the greater good. After each member provides their respective presentation, an expedited process will follow to prioritize the top goals that must be undertaken in the short-term – between today and December 15, 2005, between December 16, 2005 and August 2006, and between today and December 6, 2006.

Member Presentations:

General Contractor - Rick Slunaker on behalf of Dan Absher provided the presentation from the Association of General Contractors. A letter was distributed to the Board from the Washington Construction Industry Council (WCIC), which supports the underlying principles of the presentation. The association includes contracting and construction organizations and associations. The WCIC unanimously requests that the CPARB limit its examination of issues to those that are directly associated with alternative procurement methods.

Traditional procurement issues should be examined in the context of how they compare with the application of alternative procurement methods. The WCIC believes it is the context of the legislation and the clear intent of the Legislature in creating the CPARB – to evaluate the alternative processes under use today and other potential processes not currently utilized and evaluate them in that light and not expand to other procurement issues.

WCIC also does not believe the Board can deal with the list of items before the deadline to present its recommendation in 2007. It is not to say that the issues are not important and that the Legislature will not need to address them at some point, but they are not in the purview of the Board.

Mr. Slunaker said Mr. Absher’s presentation supports WCIC’s position with a two-list approach. List “A” issues are what the association believes are directly on point with respect to alternative procurement. As long as there is the potential for the Board to expand its activities, the association believes there are several other issues for the Board to consider as well. Generally, the list of issues is prioritized. The priority issue is timing and setting the maximum allowable construction cost. There have been some inconsistencies among owners, and the contracting community believes there should be agreement that once the plans are well along the process for completion, that is the time to set the maximum allowable construction cost to enable all bidders to best ascertain what the project will cost.

There are concerns about risk allocation and the issues of inflation that are particularly troublesome.

Lastly, the underlying principle is to ensure open access for opportunities to participate in public works construction projects. The issue is to allow opportunities for smaller, local contractors to participate in projects.

Design Industry - Butch Reifert, representing the Design Industry reviewed information provided to members:

“The Design Industry recognizes the design and construction process must respond to changing circumstances in the construction industry. Alternative delivery methods should be considered and evaluated when appropriate for public-sector clients. The appropriateness must be based, in part, on the level of knowledge the client has about the process under consideration and the ability of the client to independently evaluate and manage the process. Any delivery system needs to address assignment of responsibilities, including responsibility for professional liability. Determination to use any delivery system should be based on evidence that the system provides good value.

We recommend that consideration be given to allowing public entities more freedom to reject a contractor who is a low bidder, where that contractor has a history of being unreliable or substandard in the past. We support the use of standardized critiques of performance of architects and contractors following any major capital improvement or construction project with the critiques being utilized in a system used to pre-qualify contractors and subcontractors as part of publicly bid projects, and to continue including performance as a criteria for selecting design professionals under RCW 39.80.

Issues that we would like to see as a focus of discussion for the CPARB:

- Discussion of qualifications (Owner and Design Team) as a key part of the process
- Discussion and clarification of architect's role
- Administration of the process (for example, establish common/consistent contracts)
- Clarification of the selection process to assure that it is transparent (fair)
- Tracking and monitoring of results in terms of cost/highest value”

Mr. Reifert reviewed a list of concerns transmitted electronically to members.

Low Bid Contractor Selection - The state currently uses low bid for most projects. This often results in inexperienced contractors and is often not in the best interest of the project. A best value selection process may be the best method. With the high performance building law, having quality contractors is becoming more important to the project success. The low bid process should not be mandatory. There is interest in considering a best value model for contractor selection similar to what is used by the federal government that allows for past performance, qualifications to perform the work, and other critical factors to be considered along with price. Alternatively, consider other selection options such as, selecting the second lowest bidder or true pre-qualification for contractors.

Compliance with Qualifications-Based Selection (QBS) Laws - Some local governments are working on the edge of compliance with state QBS laws for selected architectural design firms. Examples include requesting fees in separate envelopes to be opened after the interviews, requesting the level of effort where respondents have to estimate the number of worker hours required to complete the contract. These practices should be investigated and potentially be prohibited.

Mr. Reifert asked that the issues included in the handout as referenced above also be included in the Board’s discussion as it moves forward in the process.

Specialty Contractor (Electrical) - Rocky Sharp, representing electrical contractors from southwest Washington, said most of the contractors within the electrical field do not like General Contractor

Construction Management (GC/CM) projects. It is very difficult for electrical contractors to complete a project for the same costs on a GC/CM bid as they would on a Design/Bid/Build (DBB). Additionally, some of the requirements of the GC/CM process entail more difficulty in completing the work.

Electrical contractors would like to see standardized contracts. Often, there is the risk when bidding for subcontracts. Mr. Sharp said if a standardized subcontract could be developed similar to a general contract, the contractor would be aware of risks upfront. Subcontracts are very difficult to work with in terms of risk.

Many of the smaller contractors pointed to change orders as an issue. Typically, on a change order process, the allowable markup is 15% or less. There are subcontractors that underwent audits that showed overhead at 18%. This creates difficulty in making up the difference in the costs of what can be charged versus the actual cost of the change order.

Another issue is contractor eligibility. In many cases, contractors that are capable and have completed similar work will not be allowed to bid the project. Currently, the general contractor can pick and choose electrical contractors based on criteria for the project. There needs to be a more standardized process for selecting the subcontractor.

Specialty Contractor (Mechanical) - Ed Kommers, representing mechanical and other specialty contractors, referred members to copies of his presentation in the agenda packet.

Mechanical as well as other specialty contractors are reluctant to support a renewal of GC/CM unless there are changes. Mr. Kommers said he recommends developing a package of changes that need to be made. Many specialty contractors believe the current process does not maximize the budget dollars the way it is currently implemented. Many of the comments pertain to the inefficiency in some of the elements of the GC/CM process. Mechanical contractors supported GC/CM because it minimized bid shopping because bids were delivered sealed and publicly opened. Subcontractors had to obtain a bid bond providing for built-in eligibility and responsibility. There was also an oversight committee.

Mr. Kommers said he believes the Joint Legislative Audit and Review Committee (JLARC) study was a good report. However, many of the specialty contractors who submitted much of the GC/CM comments believe they were somewhat marginalized in the study. The JLARC study also deemed inconclusive the delivery process involving:

- Risk
- Project Cost
- Quality

The priorities of the specialty contractors match the goals and the mission of the CPARB. Specialty contractor priorities include:

- Develop standard subcontract terms and conditions
- Require timely change order responses
- Prohibit incentives paid out of MACC contingency
- Revise eligibility

Mr. Kommers reviewed some of the desired subcontract terms and offered several suggestions for standardizing terms:

- Agree on new prime contract conditions
- Develop standard subcontract terms and conditions

General public works observations include:

Retainage needs lots of work
Responsibility criteria
Provide logical relief from “Johnson” decision
Restrict right to reject all bids to “good cause”

Construction Trades Labor - David Johnson, representing construction trades labor reviewed the legislation establishing the CPARB.

General areas of concern include:

Responsible bidder language under DBB is a concern. There is responsible bidder language, which is clearly outlined in the Small Works Roster and broadly defined in the GC/CM process.

Within the GC/CM process, language stipulates “lowest responsive, responsible bidder” that does not include a definition, which creates problems for awarding agencies and contractors, as well as the labor force as in some circumstances contractors who are less than responsible are awarded bids based on the submission of a lower bid. Language within the Small Works Roster and General Procurement is definite in terms of a responsible bidder. The language could be adopted within the regular Public Works Act.

Bid shopping is not adequately addressed under the DBB or General Public Works contracting. There are three applications – HVAC, Electrical, and Plumbing, which require opening of the bids shortly after the general contract is awarded. Other crafts are not and it is suggested that it be more comprehensive and that all sub-tier contractors should be announced at the same time, which would align with Oregon’s legislation, which is very clear. The industry perceives problems within the subcontracting community in terms of submission of bids.

Apprenticeship utilization expansion and how it is addressed on a craft-by-craft basis industry-wide.

Office of Minority & Women’s Business Enterprises (OMWBE) - Carolyn Crowson outlined the goals of the organization. The first issue is the low participation of minority and women-owned business in public contracting. The percentage of certified firms doing business with state agencies continues to decline annually. Recommended strategies include collaboration with Governor’s Policy Office, General Administration, and CPARB, identification of opportunities, conduct genuine outreach, and setting project goals.

The second issue is prime contractor planning and reporting. It is difficult to plan for and measure the usage of OMWBE certified firms. Recommended strategies involve better practices by owners. Reporting assists in apprenticeship and management of contracts to improve quality control, and driving costs out of construction. It also involves enterprise risk management. She noted an example of a general contractor who did not pay any of the subcontractors. The amount of work for collecting the funds was tremendous.

Another issue is prompt payment. Smaller businesses need cash flow to survive and grow. Subcontracts should be paid when the work is done.

The fourth issue concerns the right size of contracts and subcontracts for small businesses. Size of contracts/subcontracts determines the ability of small business to bid and be successful. One strategy includes, when possible, unbundling state contracts.

The last issue is waiving or reducing performance bond and insurance requirements. Maintaining bonds and insurance is cost prohibitive. Strategies include waiving or reducing bonding for low risk subcontractors and reducing insurance requirements and insurance costs.

Higher Education – Olivia Yang reported higher education is facing increasing demands in the delivery of capital projects for higher education. Programs are becoming more complex and schedules are aggressive, resulting in pressure to optimize value for the dollars expended. Tools are needed that are responsive and flexible. The number one issue within higher education is to retain the authority for the University of Washington and Washington State University, and expand the authority for regional colleges. Higher education is cognizant of the need to be responsible owners and therefore is eager to participate in a way to create a structured transition for new owners and is eager to participate in discussions about best practices, to collaborate with other owners and other members of the CPARB to standardize the interpretation and administration of contracts and the law. Higher Education's number one issue is to retain the authority and expand the authority to afford flexible and responsive tools.

The second top issue is to retain the authority.

Higher Education believes education is a way to create opportunities in the state and it is appropriate for capital investment within education to also create opportunities for people within the state.

General Administration – John Lynch reported the top issue is to allow alternative public works (APW) to extend past the sunset. GA is interested in draft legislation to allow alternative public works to continue and to address:

- Define APW public agency users
- Define APW contractor qualifications
- Address APW subcontractor issues
- Simplify APW processes

GA would like consideration for Best Value Procurement (BVP), which is currently not allowed in the state. BVP affords selection of the best contractor providing the best combination of performance, qualifications, and price. Construction procurement should be consistent, open, competitive, and free of political influence.

The JLARC addressed the issue by indicating some agencies may be using GC/CM to overcome deficiencies in the DBB contracting methods. JLARC recommended the Legislature, through the CPARB should further analyze the implications of the low-bid requirement on capital construction projects. The process is occurring federally, which was established by Federal Executive Order (1994) establishing Best Value Procurement to place more emphasis on past contractor performance, and promotes best value rather than simply low cost in selecting sources of supplies and services. Mr. Lynch said he foresees the process as a middle process between DBB and the larger projects.

Mr. Lynch outlined the BVP selection process, which resembles the GC/CM or the Architect/Engineer Selection process, which is completed through a committee in an objective environment by a review of qualifications and past performance with interviews of the top firms to select the 'best-value' contractor for the project. Non-price factors include the Request for Qualifications submittal, reference checks, third party technical review, and short-list review. Desired results include achieving project goals, and increasing management efficiency with lower risk of construction claims.

Insurance/Surety Industry – Brian Schick on behalf of Larry Byers, presented issues from the Insurance/Surety industry:

Shifting risk to subcontractors under the GC/CM process
GC/CM Subcontractor Selection Standards
Expanding GC/CM to smaller projects and inexperienced owners
Small Works Roster – Waiving Bonds

From a surety perspective, the bonding process adds some validity to public works contracting by bringing pre-qualified contractors to the table. Bonding has been an essential element of the construction process for many years because contractors must be qualified to perform the work. Without the bonding process, there are less qualified contractors who could possibly be awarded jobs. Surety considers three elements of the bonding process – capacity, capital, and character. Public bodies or general contractors may not necessarily have the resources to commit to the stringent evaluation process, which bonding provides.

Cities/Counties/Ports – Gary Ballew reported he is the Deputy County Administrator for Benton County and is representing counties. He indicated his experience with APW is limited as his respective county is not allowed to use them. The legislation for APW procurement applies to counties with a population of over 450,000, which applicable to only three counties. Consequently, the remaining 36 counties believe the methods should be extended for broader utilization, as well as, addressing project cost eligibility and preventing the sunset clause.

Cities/Counties/Ports – Rodney Eng reported he is representing cities. Mr. Eng reported the City of Seattle has utilized all APW methods except job order contracting and has a great deal of success and has learned much from the experience. Mr. Eng referred to city priorities (provided to members separately). He noted he is often approached by representatives from other cities who question why the City of Seattle is able to utilize APW procurement methods.

The number one priority is to remove the sunset. The method has been proven and is providing good value to the public. All public entities need a variety of tools for different types of projects. DBB is still the primary tool used by all public entities but it also doesn't exclude the need for utilization of other methods to meet the wide variety of projects.

The second priority is the language authorizing public entities to use APW procurement methods. It is a key issue for both cities and counties. The determination was based on a political decision. The key is "qualified owners." The process is not simple and it takes a sophisticated owner to understand the process. Cities would like the CPARB to consider identifying eligible public entities than can utilize APW procurement methods other than through an arbitrary process while recognizing and understanding that the owners must have a sense of their own autonomy and are not obliged to a third party.

The final priority is expanding the types of projects that can be considered for APW methods. This may involve specifying in more detail the criteria that can be utilized to determine the appropriate APW procurement method.

Cities/Counties/Ports – Michael Mequet, representing Ports, noted Ports are experiencing many of the same frustrations with the sophistication of construction budgets. The control systems are becoming increasingly more complicated and complex. Part of the problem is the lack of good pre-construction reviews during the design period. One of the benefits of the GC/CM is having the prime contractor on board during the design process, which helps to reduce errors and omissions. He suggested exploring ways to extend the opportunities to mechanical and electrical subcontractors especially for the control features of projects. The size of sub packages is also an issue. When subcontractors are performing 50% to 60% of the work regardless of the procurement method, it is based on the bottom line of the

subcontractor, which is not producing the best results for the project. Another issue is risk and roles of GC/CM. A better definition of the risk and roles would be helpful for both the contractor and the owner.

Mr. Mequet referred to other practices within other states and noted the industry will continue to advance and the state needs to advance concurrently. Recently, representatives from Arizona State University visited and discussed different procurement processes that they are using. There are other states that have some good processes that the Board might be able to consider to enable the state to take advantage of them.

Mr. Mequet referred to the issue of prequalification and asked if there is some way of obtaining the entire package for contracting that will produce a better overall package for owners. The low bid is not necessarily producing the quality that is intended for the contract documents. There should be a method for the “big picture” and having a better way of managing contractors and subs for the intended project.

Mr. Lynch recessed the meeting for a break from 10:22 to 10:36 a.m.

Public Hospital District Project Review Board (PHDPRB) – Wendy Keller provided input on the GC/CM process for public hospitals. Most hospital districts in the state are small. Approximately, seven districts have sizable projects. Many of them would like to use GC/CM. Subsequently, one recommendation is to reconsider the project cost that can utilize APW procurement methods. Additionally, there are different interpretations of the legislation and a wide variety of backgrounds represented on the PHDPRB, which leads to another recommendation to provide more clarity within the legislative. The PHDPRB moved forward and interpreted the legislative and established guidelines for approval of projects to include:

- Description of Project
- Project budget (special equipment issue for hospitals)
- Project schedule
- Project characteristics (why GC/CM is appropriate)
- Public benefit justification
- Qualifications – Project Staff
- Hospital construction history
- Authority

To date, five hospital districts have applied with approval of three projects for the GC/CM process.

Some findings from application review revealed:

- Predominate thinking that GC/CM is only way to get qualified contractors
- Gaining contractor perspective during design was highly desired
- Some applicants hadn’t started developing time terms and conditions
- Schedules tended to be unrealistic
- Site or building diagrams were best for complexity discussions
- Project’s bid (high) – using GC/CM for redesign
- Hospitals experience with alternative delivery process management limited (small hospitals)
- Submitted organization charts were for hospital not for the project
- Public benefit can be receipt of grant funds with expiration window
- Subs with GC/CM experience in rural locations limited (like infection control)
- Varied experience/backgrounds or board members very beneficial

Findings led to a refined application process to obtain more specific documentation (CPARB members were provided with a copy of the revised application package).

The PHDPRB's issues include in priority order:

- a. Remove legislation ambiguities, incorrect references, inconsistencies, and sunset.
- b. Improve definitions or requirements for use of alternative processes.
- c. Require clear and consistent evaluation criteria
- d. Lower dollar limit for participation (less than 5 million)

Public School District Project Review Board – Dan Vaught reported on the issues by school districts:

Removing the legislative sunset
Retaining authority
Removing pilot language from the current legislation.

The Public School District Project Review Board has met approximately 15 times since June 2000. The Board's focus is to review applications submitted by a variety of different school districts focusing on project complexity, budget scheduling, etc. Mr. Vaught referred members to additional material that focuses on the successes of school districts. The information contains a list of authorizations the Board has rendered in terms of GC/CM pilot projects. Three of the projects have been completed and include Northshore Junior High, Seattle Nathan Hale High School, and Mann Elementary School. All of the projects entailed construction on an occupied site and were pilot projects. The school districts used a combination of consultants and district staff, which proved to be successful.

Mr. Vaught reported the Northshore Junior High School was completed within budget and on schedule with very little impact to the educational process during the school session. He described the project and some of the things learned. He noted with DBB, the same level of expertise at the same time during the same milestones was not achieved. Safety comes through the forefront through the design process, which is important. GC/CMs were found to provide realistic construction schedules as more expertise was available earlier. However, budgeting continues to be an issue. Realistic schedules also mean more buy-in from all involved in the project including the end user. In all the projects, a benefit with working with contractors is their ability to interface with clients and obtain information that helps them solve problems for the end users. This was found to be a tremendous benefit in the GC/CM process. All contractors were able to meet with principals and teachers, and in some cases, the students.

Construction costs are more difficult to discuss in a DBB process. Within the GC/CM there is an established relationship with both the architect and the contractor early in the process. Marketing impacts are more easily assimilated into the discussion, into the design, and into a solution.

Mr. Vaught said the JLARC study was based on very little data. The study appeared to be positive. Mr. Vaught said as he speaks with his other colleagues in other school districts, the opportunities for the GC/CM option in more complex projects is something that is supported. Mr. Vaught said the goal is to cooperate and understand the issues from all the different perspectives around the table, and seek a solution that strikes a balance to some of the critical issues.

Mr. Lynch advised all the materials distributed to the Board will be posted on the website. A full list of issues will also be included on the website.

Public Comment

Michael Transue, representing Association of General Contractors of Washington, asked how he can obtain copies of the materials included in the Boardmember agenda packets to assist him in his note taking during meetings. Mr. Lynch said materials will be included on the website as well as providing several agenda packets during the meetings.

Strategic Planning

Mr. Brasher suggested a discussion by the CPARB on issues members believe they will have an opportunity to achieve. He suggested bridging their respective interests to what is best for the public works industry for design and construction.

He asked members to consider the consequences to them, their organization, and industry if the Board is successful.

Members offered the following observations:

Success means setting some very clear criteria as to who is allowed to use the process.

The process should be fair especially for the size of contractors and subcontractors and criteria is provided to contractors along with risk factors with the understanding that it is a competitive bidding process.

Implement priorities to allow the support for renewing GC/CM.

End up with a commodity that is less controversial, easier to manage, and inclusive of the subcontractor community that is also supportive of the process.

Consider other alternative processes as well – DBB and how it can be improved as well as Design/Build (DB). The focus should be on all different methods.

Develop a product most beneficial to the public and all users.

Develop a product that results in a better allocation of risk between the parties resulting in less controversy between the parties to reduce inefficiencies to gain better pricing and providing a better product to the public. The consequence will be less work for all parties.

Profitable, fair opportunities for subcontractors and small businesses.

Improve transparency of the process with respect to which process will be the most beneficial for a project. This includes understanding what projects for example, would benefit from GC/CM versus other methods that might be appropriate for particular projects. Consider other processes, such as the Best Value Model. Focus on securing the best possible contractors for Public Works Projects.

Consistency and clarity in use and evaluation of each of the contracting methods.

In the short-term – working to agree on the recommendations to the Legislature for the different methods.

In the long-term – members can begin to build bridges to each other to continue the conversations about better practices, mentoring, standardizing, and creating consistency and clarity- as it's the responsibility of the CPARB for the state.

Have the tools to deliver the best possible projects to include on time and on budget, quality projects that meet the programs of state agencies as well as managing shrinking resources that include efforts within the projects rather than in overhead costs while considering the elements of public works that are inherent in public projects that are elements of efficient delivery – small businesses, fair and open competition, and labor interests, etc.

The Legislature directed CPARB to evaluate alternative public works procurement processes. The Board should evaluate whether the state should continue the alternative processes. Success would be a clear acknowledgement of the value of APW and recognition of distinct advantages and definite problems before alternatives are solidified.

Ensure continued use of bonding in whatever method of contracting is utilized to ensure continued protection as in the past.

Mr. Brascher offered the situation of where the Board's work and action fails to produce results. He asked each member about the consequence to them and their respective organization and the public works industry.

Boardmembers offered the following responses:

It would mean that decisions made at the legislative level are based on untrue criteria because the pressure will be maintained and without clear guidelines, more people will use the process because there is the belief that the process provides the best value. Legislatively, there will be pressure to continue to pursue the process regardless of the inequities of the process, which is not preferable.

One negative consequence is that each organization represented on the CPARB would submit its own legislation.

Failure would indicate "business as usual" utilizing the same tools currently available with fewer options to provide the best value to the public because the tools will not be available.

For GA, if the same tools were available as in Benton County, GA would be less effective and less efficient.

It would represent regressing to the past in some ways. In the past, there have been some unsuccessful projects where the right of passage for closing out the project was dispute resolution. It's not good value for the money.

Tools will be lost and there will not be the ability for GC/CM and DB. In complex projects where it is truly the only way to avoid pitfalls, failure will once again be dominant and greater. Individual legislation submitted by various elements of the industry will produce clear victory for one interest(s) while devastating to other interests. The results will equal winners and losers, which is failure.

If the Board fails to produce results to create a better system then the process has contributed to the creditability to the concept of "business as usual" if industry experts who have been convened by the Legislature fail to develop recommendations that move APW procurement processes forward.

A member referred to the JLARC study results regarding the lack of clarity on subcontractor and general contractor responsibilities. The inability of the Board to provide recommendations will lead to more confusion in the clarity of where responsibilities lie.

Failure will mean one tool that is up-to-date and another tool that is not up-to-date. The Board has the expertise to develop a common set of criteria to apply to all construction projects. If only one tool is fixed, it is likely projects will use another that might not be appropriate for the project. The Board has an obligation to ensure the right tool is selected.

Failure will not provide the best value to the public.

A sense of failure personally, if the Board cannot produce recommendations.

Failure to produce a result based on some inappropriate premises or to develop process based on a new premise that is not based on good judgment.

Mr. Brascher asked members to consider the probable failures as a motivator to work as a team and accomplish the task as assigned.

Mr. Brascher reviewed the Board's legislative directive.

Members were asked to quick start the strategic planning by considering the top three topics from the Board's list that can be accomplished quickly. Members were asked to submit a weighted vote to determine the top issues.

Mr. Johnson noted the issues are specifically focused on alternative contracting procedures and not on existing procedures, which is also included in the legislation to review existing procedures and how those could be deemed to be more appropriate, streamlined, or more effective.

Ms. Haigh said the legislation includes traditional public works procurement processes because it would be difficult to ascertain the issues associated with alternative public works procurement processes without first understanding traditional public works. If criteria are developed for alternative public works there needs to be some consistency between all public works processes. However, it the Board's responsibility to either consider or set aside traditional public works at this time.

Mr. Brascher described the prioritization exercise, linking topics, and establishing subcommittees. Members were asked to prioritize short, medium, and long-term issues. Voting was weighted and members were encouraged to vote on all or none of the issues. The three topics were defined as:

Things that can be completed by the mid-December 2005 to meet the 2006 Legislative session.

Things to target that can be completed by August 2006.

Things to target that can be completed by mid-December 2006 to meet the 2007 session.

The meeting recessed for lunch from 11:59 a.m. to 12:21 p.m.

The Board reviewed, and in some cases, refined and clarified the intent of each member's top three issues and voted on issues likely to be completed by mid-December 2005.

Issues for discussion and potential completion by mid-December 2005:

<u>Issue Title</u>	<u>#of Votes</u>
Maximum Allowable Construction Cost (MACC) Timing on GC/CM Projects	2
Proper Allocation of Risk	2
Opening the Market to Smaller Local Contractors	5
Low Bid Contractor Selection	9
Compliance with Qualifications Based Selection (QBS) Laws	0
Legislative Expansion of Alternative Public Works Contracting Methods	9
Standardize Subcontracts	1
Change Orders	0
Subcontractor Eligibility	4
Develop Standard Subcontract Terms and Conditions for Contracts between GC/CMs and Subcontractors – <i>Linked with Standardize Contracts</i>	
Requires owners and GC/CM's Responsible to Change Order requests within a Reasonable time	0
Prohibit Incentive Provisions tied to MACC contingency except for schedule Milestones and buyout contingency	0
Responsible Bidder Definitions Under Design/Bid/Build	4
Bid Shopping (Release of all sub-tier awards)	2
Apprenticeship Utilization	3
Low Participation of Minority Firms in Public Contracting	3

Prime Contractor Planning and Reporting	0
Prompt Payment of Vendors and Contractors	1
Retain and Expand Authority for Alternative Contracting	7
Issues for Specific Alternative Contracting <ul style="list-style-type: none"> a. Specific to GC/CM: <ul style="list-style-type: none"> 1. Early selection of major subcontractors during design 2. Bonding b. Specific to JOC: <ul style="list-style-type: none"> 1. Increase number of contracts per owner, and raise dollar limit per work order 	0
Outside of Legislative Recommendation, and for discussion a) Different Ways of Responding to Escalation and Market Conditions, and b) When to Set the MACC – <i>Linked to MACC Timing on GC/CM Projects & Proper Allocation of Risk</i>	2
Remove Sunset	12
Add Best Value to APW	9
Better Define APW Users	5
Clarify GC/CM Shifting Risk to Subcontractors	0
GC/CM Subcontractor Selection Standards – <i>Linked with Subcontractor Eligibility</i>	0
Examine the Criteria for Expanding GC/CM to Smaller Projects and Inexperienced Owners	1
Examine Expansion of the Usage of GC/CM and Design/Build to all Levels of Government – <i>Linked to Examine the Criteria for Expanding GC/CM to Smaller Projects and Inexperienced Owners</i>	4
Reduction and Elimination of Limitations Based on Dollar Size – <i>Linked to Remove Sunset</i>	12
Removal of Sunset Clause for RCW Chapter 39.10 – <i>Linked to Remove Sunset</i>	
Public Bodies Authorized to Use Alternative Public Works Procurement Methods – <i>Linked to Legislative Expansion of Alternative Public Works Contracting Methods</i>	
Types of Projects to Use Alternative Public Works Methods On – <i>Linked to Legislative Expansion of Alternative Public Works Contracting Methods</i>	
Mechanical, Electrical, and Plumbing Subcontractors – <i>Linked to Issues for Specific Alternative Contracting</i>	0
Size of Subcontractor Packages	0
GC/Risk Transfer – <i>Linked to Proper Allocation of Risk</i>	
K-12 Continue to Use Alternative Contracting Options – <i>Linked to Legislative Expansion of Alternative Public Works Contracting Methods</i>	
Legislative Clarity – for Using GC/CM - <i>Linked to Legislative Expansion of Alternative Public Works Contracting Methods</i>	
Consistent Evaluation Criteria (of projects requesting use of alternate contracting methods)	3
Minimum Participant Qualifications for Public Entity Use of Alternative Contracting Methods - <i>Linked to Legislative Expansion of Alternative Public Works Contracting Methods</i>	
Establish Data Collection System that is Consistent	17
Develop Specific Recommendation to the Legislature as We move into Session	1
Develop a Mission Statement with Strong Consensus by the Committee	3
The Choice of Which Method of Contracting to Use is a Key Initial Decision to be Made	0

The meeting recessed for a break from 1:24 p.m. to 1:36 p.m.

Members discussed designating member substitutes and whether the Board should or should not accept input from substitutes attending on behalf of an appointed member. Mr. Eng indicated retaining the continuity is important. Mr. Lynch agreed. Ms. Deakins noted the Board's Procedures do not address substitutes.

Dave Johnson moved, seconded by Rodney Eng, to modify the Board's Procedures to allow designated substitutes for Boardmembers unable to attend meetings to participate and contribute to Board discussions. Motion carried.

Mr. Brascher reviewed the linked and ranked issues of priority by groupings based on votes.

Members reviewed and ranked issues according to issues to be addressed by mid-December 2006, by August 2006, and by December 2006.

<u>Issue</u>	<u>Dec 05</u>	<u>Aug 06</u>	<u>Dec 06</u>
Establish Data Collection System that is Consistent	17	1	
Removal of Sunset Clause - Permanent Removal of the Sunset Clause for RCW Chapter 39.10	12	15	
Legislative Expansion of Alternative Public Works Contracting Methods	9	10	
Low Bid Contractor Selection	9	5	
Add "Best Value" to APW	9	12	
Retain and Expand Authority for Alternative Contracting	C5 (9)	C5	C5
Standardize Subcontracts - Develop Standard Subcontract Terms & Conditions for Contracts between GC/CM's and Subcontractors	1	12	
Proper Allocation of Risk - GC/Risk Transfer - Outside of Legislative Recommendation, and for discussion a. Different Ways of responding to Escalation and Market Conditions	2	12	
MACC Timing on GC/CM - Outside of Legislative Recommendation, and for discussion a. When to set the MACC	2	3	
Subcontractor Eligibility - GC/CM Subcontractor Selection – Clarification of the Standards	0	12	
Expansion of the Usage of GC/CM and Design/Build to all Levels of Government - Expanding GC/CM to Smaller Projects and Inexperienced Owners – examine the risks associated with doing this - Reduction or Elimination of Limitations Based on Dollar Size - Public Bodies Authorized to Use Alternative Public Works Procurement Methods - Types of Projects to Use Alternative Public Works Methods On.	4	11	

- K-12 Continue to Use Alternative Contracting Options - Legislative Clarity – for Using GC/CM - Minimum Participant Qualifications for Public Entity Use of Alternative Contracting Methods			
Retain and Expand Authority for Alternative Contracting	C5 (9)	C5	C5
MEP (Mechanical/Electrical/Plumbing Involvement During Design - Issues for Specific Alternative Contracting a. specific to GC/CM: 1) Early selection of major subcontractors during design 2) Bonding b. Specific to JOC: 1) Increase number of contracts per owner, and raise dollar limit per work order	0	4	
Opening the Market to Smaller Local Contractors	5	5	
Compliance with Qualification Based Selection (QBS) Laws	0	0	
Change Orders - % of Markup	0	2	
Require Owners and GC/CM's Response to Change Order Requests Within a Reasonable Period of Time	0	4	
Prohibit Incentive Provisions tied to MACC Contingency Except for Schedule Milestones and Buyout Contingency	0	2	
Responsible Bidder Definitions Under Design/Bid/Build	4	10	

Chair Lynch recommended deferring further ranking and establish subcommittees. Members will complete voting on the remaining issues at its November meeting. Mr. Brascher offered to include the information on the website.

Present Research & Data Collection Assistance

Darlene Septelka, Washington State University, briefed the Board on JLARC's recommendations for the Board.

In Finding 2, it is critical to the ongoing development of sound public works contracting policy that the CPARB should develop an initiative to improve consistency of GC/CM project documents across projects and jurisdictions

In Finding 3, Lack of sound, reliable and consistent data collection is a major impediment to understanding the impacts of GC/CM. CPARB, in consultation with the Office of Financial Management, should develop standardized statewide performance indicators and benchmarks for all major public works projects. Project performance data should be collected for state and local capital construction projects in one database in order to develop standards for evaluating comparable projects.

Studies completed to date include:

National Studies – CII Study, which compares GC/CM, Design/Build, and Design/Bid/Build.

Washington State Studies :

➤ **Septelka/Goldblatt Studies**

- 2005 – Survey of GC/CM Projects in WA State (JLARC Study)
- 2000 – Washington State Alternative Public Works Methods Study (APWMOC Study)

➤ **Dye Management Group**

- 2004 – Case Studies of Major Capital Projects (JLARC Study)

Ms. Septelka recommended members should obtain a copy of the studies.

JLARC's recommendations were based on the Washington State studies (Septelka/Goldblatt 2005 Study and the Dye Management Group 2004 study).

Ms. Septelka reviewed the problems the study encountered in developing and comparing projects:

Difficulty in tracking what agencies and projects are utilizing alternative delivery methods – it took several months to ascertain who was using GC/CM.

Inconsistencies between agencies – different data collection and monitoring methods and systems. There were different systems and different data sets.

Inconsistencies of terminology between agencies.

Data self-reported and resistance to report data.

Lack of data to make delivery method comparisons.

Based on the issues, Ms. Septelka reported she has developed a set of questions the Board should consider:

WHAT?

- Determine project performance measures
- Determine what types of data should be collected – Objective & Subjective Data

WHO?

- What agencies – State and Local
- What size of projects – Above \$10M
- What Delivery methods – GC/CM, DB & DBB Projects

HOW?

- Develop standards for evaluating comparable projects
- Determine method of data collection

WHEN?

- At what project stage should data be collected, Planning, Design, Construction, Closeout

WHERE?

- Who collects, analyzes and reports

Ms. Septelka recommended the Board form a subcommittee to address the benchmarking questions and make recommendations to the Board that addresses JLARC's recommendations. Additionally, the Board should consult with OFM about its role in JLARC's recommendations and a central project database.

Ms. Haigh reported at one time, there was consideration for the CPARB to report under OFM rather than GA. She noted there is possibly a reference to OFM's participation in the legislation. She suggested contacting OFM.

Assign Subcommittees

Mr. Lynch recommended members consider the assignment of three subcommittees. Mr. Brascher reported the subcommittee assignment is for members to look at linkages and recommend to the CPARB which subcommittee should address the issues. There appears to be trend developing on many of the issues and as the assignments of the subcommittees occurs, members who have an interest will sort out the needed steps for proceeding.

Members agreed establishing the subcommittees will assist in better defining and sorting the issues to determine the issues that are the most urgent and need the most focus. Mr. Eng noted part of the issue is the lack of completing the strategic planning. Relying solely on the numbers is difficult especially when 15 items remain to be considered. He suggested the Board should focus on those issues that have been identified as top issues that need to be resolved. Mr. Mequet added it's more critical to establish the subcommittees and for subcommittees members to begin sorting the issues.

Mr. Brascher noted one criterion for assignment was gaining permission for an expedited methodology of issues that can move the process forward. He suggested developing some methodology or protocol to afford the subcommittee permission to move forward.

Members spent some time reviewing the top issues, possible deliverables, and scope of work possible within the timeline. Mr. Ballew recommended establishing three subcommittees:

1. Data Collection
2. Fix the Authority
3. Expansion

Discussion ensued on the doable elements that can be accomplished. Members recommended revising the proposed subcommittees and focus:

1. Data Collection – Establish Data Collection System that is Consistent
2. Sunset Review – How to Break up the Topics of Sunset Issues
3. Expansion. – New Users of APW, New Methods & New Projects

The Board agreed to the following subcommittee assignments:

Data Collection – Lead, Darlene Septelka, AGC (Dan Absher or Rick Slunaker), Ed Kommers, Carolyn Crowson, Olivia Yang, City of Seattle, Rep. Kathy Haigh, OFM

Sunset Review – Lead Rodney Eng, Dan Absher, Butch Reifert, Rocky Sharp, Ed Kommers, Dave Johnson, Olivia Yang, John Lynch, Wendy Keller, Tom Peterson

Expansion – Lead, Olivia Yang, Butch Reifert, Ed Kommers, Dave Johnson, John Lynch, Gary Ballew, Rodney Eng, Michael Mequet, Nora Huey, Tom Peterson, Rick Slunaker

Mr. Lynch said the expectation is for the subcommittees to meet several times prior to the next meeting and present recommendations on next steps. Mr. Brascher asked the Chair to contact each subcommittee leader and provide subcommittee member names and addresses.

Next Meeting Agenda

The next meeting is November 10, 2005

Adjournment

Chair Lynch adjourned the meeting at 3:16 p.m.

Minutes approved on the 10th day of November, 2005, as amended.

Prepared by: Valerie Gow, Recording Secretary
Puget Sound Meeting Services